



# UNIVERSITY OF OREGON

Visual Resources Collection  
Architecture & Allied Arts Library  
300 Lawrence Hall  
ph: 541/346-2209 / fx: 541/346-2205  
[csundt@oregon.uoregon.edu](mailto:csundt@oregon.uoregon.edu)

June 10, 1997

Peter N. Fowler, CONFU Facilitator,  
Attorney-Advisor, Office of Legislative and International Affairs  
U.S. Patent and Trademark Office  
Box 4  
Washington, DC 20231

Dear Mr. Fowler:

Please accept this letter and the enclosed paper as my personal statement **in opposition** to the endorsement of the proposed CONFU Digital Images and Multimedia guidelines.

As demonstrated in the paper, I have tested the proposed guidelines against current practices in my work at the University of Oregon. I found that the guidelines are unworkable as well as unreasonable and often contradictory. The methods recommended in the guidelines, to be in compliance with Copyright Law, are overly complex when applied to actual practice, so much so that it is unrealistic to require or expect the average student or educator to understand them and apply them in daily practice.

What we really need are guidelines that will give us a clear understanding of best practices involving images in today's "classroom" or as used in research, study, or criticism, rather than the seemingly arbitrary numerical formulas prescribed in the current proposals. Secondly, we must have some assurances that, as with text, certain uses of images can be considered fair uses and that permissions or licenses are not the bottom-line requirement. Finally, we need consensus to lessen the burden of responsibility now borne by image users when it is extremely difficult (sometimes impossible) to know who holds rights in images. I hope that the next round of discussions will produce such a document.

Thank you for this opportunity to comment on the guidelines and to be involved in this important process.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Christine L. Sundt", with a stylized flourish at the end.

Christine L. Sundt  
Visual Resources Curator

## The CONFU Digital Image and Multimedia Guidelines: The Consequences for Libraries and Educators

by Christine L. Sundt

In 1994, when the Conference on Fair Use (CONFU) came into being, the prospect of developing guidelines for the use of images, in teaching, research, and scholarship, at nonprofit educational institutions was greeted by members of the educational and visual resources communities with both enthusiasm and apprehension. We were enthusiastic to be part of the process of crafting guidelines because this was a long-awaited opportunity to clarify practices and customs that had been overlooked in the 1976 Classroom Guidelines, the "Agreement on Guidelines for Classroom Copying in Not-For-Profit Educational Institutions." *Footnote 1. H.R. Rep. No. 1476, 94th Cong., 2d Sess. 68 (1976)* Our apprehension on the other hand stemmed from past practices. We knew that our customs of using copyrighted materials would be challenged. What to our constituents have always seemed acceptable, reasonable and "fair" practices, were being viewed from outside the discipline as questionable, if not downright illegal.

The practices to which I refer are first, the creation and use of images as ideas or memory aids for which copyright ownership in the underlying object is not easily understood, and for which permission has not been acquired; and second, the display and transmission of such images in traditional classrooms and beyond. *Footnote 2. Philip C. Beam,*



*"The Color Slide Controversy," in College Art Journal [later known as the Art Journal] 2:1 (1943), 37: "It is common knowledge that the bulk of such slides is ground out, literally by the thousands, from photographs, book illustrations, and even cheap postcards."* Until recently questions regarding the display and transmission of images focused on broadcasting and early distance learning projects which, by current standards, seem surprisingly tame and relatively harmless. Today, as the Internet becomes the most significant medium for communication since the discovery of electricity, the issues of display and transmission are far more critical to intellectual property rightsholders than ever before, because the walls of the classroom are nowhere to be seen, and information is now capable of streaming anywhere, and to anyone online.

In disciplines involving art, the image is the basis of daily discourse. Images are the tools of the trade, both the substance and the spirit of art, when used in teaching, research, and scholarship. For disciplines based entirely on the creative endeavors of humankind, the need for legal principles that clarify how these endeavors can continue and even flourish is essential. And yet, given the fact that guidelines have finally been proposed covering both Digital Images (DI) and Multimedia (MM) images, *Footnote 3. Copies of the proposed guidelines are available online at <http://www.uspto.gov/web/offices/dcom/olia/confu/>* it is unfortunate that, as written, they are seen by many within the educational community to be problematic: unworkable, premature, unbalanced, as well as limiting unnecessarily the concept of "fair use." *Footnote 4. Organizations opposing the endorsement of the proposed guidelines include, but are not limited to the American Library Association, Art Libraries Society of North America, The Association of Research Libraries, the Society of American Archivists, and the Visual Resources Association. These statements are being collected at <http://oregon.uoregon.edu/~csundt/cweb.htm>.* As such, they are said to invoke compromises that will ultimately dictate the content and methods used for teaching the arts.

The purpose of this paper is to explore first, the bases for these problems, and secondly, to speculate

why the proposed guidelines for digital images and multimedia fall short, in my opinion, of accomplishing their stated goal. In my conclusion I will offer questions for further study that I hope will highlight how the current guidelines could be improved, or if this is not possible, why a new direction in the guidelines should be explored.

Guidelines would have been helpful from the beginning, in the early years of the twentieth century, when art and art history emerged as autonomous programs at colleges and universities in the U.S. *Footnote 5. Howard B. Leighton, "The Lantern Slide and Art History," History of Photography 8:2, April-June 1984, 107.* We should have had guidelines in the 1960s, when interest in the arts peaked. During this period, many new programs were started, and we found the arts being incorporated into the curricula in high schools, community colleges, and even some vocational programs. According to Howard B. Leighton, by mid-century, over 550 colleges offered courses in art history. *Footnote 6. Ibid.* By now, this number probably exceeds 3,000. Having no guidelines for the use of images during these years, most programs relied on common sense in developing the resources that were required for teaching. When slides were needed, they were acquired by any means available or known. Museums and galleries supplied some images, but not all images needed for teaching can be found in museums or galleries. For others, photographers were enlisted to visit distant sites, to document the architecture and objects. They sold the resulting slides to schools at modest cost; some of these small companies are still in business today. For highly specialized materials, faculty members learned how to take their own photos. Few could afford to hire professionals to follow them in their travels, to record the events, objects, conditions, and textures needed for their studies, their lectures, and to illustrate their books and journal articles.

When images were found in publications that could augment the materials purchased, or photographed on site, these illustrations were rendered as slides and used in the classroom. No one questioned this practice, and everyone did it, both here and abroad. The slide reproducing an illustration in a textbook, for example, was thought to make the textbook more relevant and usable for students, as a medium for discourse, analysis, and study. After the illustrations were photographed, no one considered throwing the copy slides away. Why would we do this, when we knew that the slides could be used again, when next the course was offered, or in another course on the same topic?

While it might seem that the practice of copying images from books should have raised questions with regard to copyright back in the good old days, this was not necessarily so. Instead, two of the most troubling issues in the teaching of art and art history were whether to use black-and-white or color images in the classroom, and whether to convert images from the old lantern-slide formats to 35mm. *Footnote 7. See Beam, "The Color Slide Controversy," 35-38; and James M. Carpenter, "The Limitations of Color Slides," College Art Journal 2:1, 38-41.* Accuracy, some felt, could not be rendered in either the smaller film format or in color. Black-and-white images were thought to capture the idea of the artwork more accurately, and were therefore argued to be better teaching tools. The argument eventually fell aside as color photography improved, 35mm became the industry format, and illustrations in books, journals, postcards, posters, and the like offered better representations of the underlying art or architectural objects. Then as now, copystand photography was an important and necessary means of acquiring images for use in the classroom.

During these years, we didn't have copyright or fair use guidelines, and yet somehow, we managed to stay out of trouble. There are no cases on record that include decisions regarding the use of images made from copyright materials in nonprofit educational institutions. It may be that no one thought the practice of making slides to illustrate a lecture in an educational institution was wrong, or it may also be that no one wanted to take the matter to court because no money crossed palms, or there just wasn't enough at stake.

Whatever the reasons, we find ourselves troubled by the prospect of now having guidelines that label some of our practices as unlawful or uncertain within the legal framework that will make compliance with the proposed guidelines difficult. At best, if we try to apply the guidelines, we will likely fail to comply because the requirements are more than can be reasonably understood and accomplished.

Before demonstrating how the guidelines will work in a case study, I would like to review some of the

areas of the guidelines that I find most challenging and explain my reasons for concern. The first is the statement of purpose in the preamble:

The purpose of these guidelines is to provide guidance on the application of fair use principles by educational institutions, educators, scholars, and students who wish to digitize copyrighted visual images under fair use rather than by seeking authorization from the copyright owners for non-commercial educational purposes.

If the guidelines could have accomplished this goal, namely how to digitize images for nonprofit educational purposes under fair use that would not require authorization from the copyright owners, we would not be here today. The fact is that, especially in the Digital Image (DI) guidelines, all uses are ultimately uses for which permission must be sought, or for which we must be authorized by license or contract. The only way fair use can apply, will be during a brief interim period while permissions are being secured, and/or only if very rigid, costly, and time-consuming conditions are in motion. For all intents and purposes, fair use is on a time clock, and like in Cinderella, as the splendid carriage reverts to a pumpkin, a non-infringing use transforms into an infringing use when the magic hour arrives.

Second point: Lawfully acquired. In DI section I.3 (Applicability of These Guidelines) *Footnote 8*. *"These guidelines apply to the creation of digital images and their use for educational purposes. The guidelines cover (1) pre-existing analog image collections and (2) newly acquired analog visual images. These guidelines do not apply to images acquired in digital form, or to images in the public domain, or to works for which the user has obtained the relevant and necessary rights for the particular use. Only lawfully acquired copyrighted analog images (including original visual images, reproductions, published reproductions, and copies of published reproductions) may be digitized pursuant to these guidelines.[emphasis added] These guidelines apply only to educational institutions, educators, scholars, students, and image collection curators engaging in instructional, research, or scholarly activities at educational institutions for educational purposes."*, the requirement that only lawfully acquired copyrighted analog images may be digitized is, at best, a catch-22. What is a lawfully acquired copyrighted analog image? Is it the image made years ago from a copyrighted book or postcard that no one has challenged? Even more problematic, how do we know that an image is actually copyrighted or not? Is the claim of copyright on images reproducing public domain artifacts a valid claim? *Footnote 9*. *Considerable discussion occurred in 1996 around the notion of "thin copyright" on the "CNI-COPYRIGHT" discussion list. The archive of this thread is maintained online at [http://www.kentlaw.edu/cgi-bin/ldn\\_news/-T+law.listserv.cni-copyright](http://www.kentlaw.edu/cgi-bin/ldn_news/-T+law.listserv.cni-copyright). Another thread, photographic reproduction, is also related to this discussion.* If so, what is the copyrightable expression in the image and can this be separated from the rest as we untangle the layers of ownership in our images?

Point three: Intrinsic commercial or reproductive value. In DI section I.4 *Footnote 10*. *"A thumbnail image, as used in a visual online catalog or image browsing display to enable visual identification of records in an educational institution's image collection, is a small scale, typically low resolution, digital reproduction which has no intrinsic commercial or reproductive value."* a thumbnail image is defined as "used in a visual online catalog or image browsing display to enable visual identification of records in an educational institution's image collection" and further, "a small scale, typically low resolution, digital reproduction which has no intrinsic commercial or reproductive value." If the image has no value, why is it being protected? If the image enables visual identification, isn't this more in line with being an idea or a fact than an original copyrightable expression? *Footnote 11*. *According to the Copyright Act, USC Title 17, 102. Subject matter of copyright: In general: "(b) In no case does copyright protection for an original work of authorship extend to any idea, procedure, process, system, method of operation, concept, principle, or discovery, regardless of the form in which it is described, explained, illustrated, or embodied in such work." [emphasis added] If it is merely an idea of the underlying work, why must access be restricted to a secure network and why should continued use of such article depend on securing permission from the presumed rightsowner?*

Point four: Access and display. The proposed guidelines require that an educational institution, displaying an educator's compilation of digital images, restrict access to only those students who are enrolled in the course (DI Section 2.3.2). *Footnote 12*. *"Course compilations of digital images: An educational institution may display an educator's compilation of digital images (see also Section 3.1.2)*

*on the institution's secure electronic network for classroom use, after-class review, or directed study, provided that there are technological limitations (such as a password or PIN) restricting access only to students enrolled in the course. [emphasis added] The institution may display such images on its secure electronic network only during the semester or term in which that academic course is given."* This is not a requirement for analog text items, so why does it become the rule for digital images? Libraries do not limit the use of items on reserve to only those students enrolled in the course for which the materials are reserved. Indeed anyone can check out these materials as long as the circulation conditions, length of time, where used, etc., are met.

Point five: Preventing duplication. In both the proposed digital image and multimedia guidelines, the educational institution is required to guarantee that the network displaying the digital information is secure, but the MM guidelines require that technological limitations also be in place to prevent making copies of the copyrighted materials. In light of recent revelations that even high-level government networks have been breached by hackers, how can an educational institution guarantee a secure network and prevent copying? In the MM guidelines if copying cannot be prevented, a more restrictive procedure with time and quantity is prescribed. *Footnote 13. MM 3.2.3: "If the educational institution's network or technology used to access the educational multimedia project created under Section 2 of these guidelines cannot prevent duplication of copyrighted material, students or educators may use the multimedia educational projects over an otherwise secure network for a period of only 15 days after its initial real-time remote use in the course of instruction or 15 days after its assignment for directed self-study. After that period, one of the two use copies of the educational multimedia project may be placed on reserve in a learning resource center, library or similar facility for on-site use by students enrolled in the course. Students shall be advised that they are not permitted to make their own copies of the educational multimedia project."* It would appear that no one will be able to enjoy the more liberal usage reserved for secure networks because the security and access requirements are not achievable.

Point six: Reasonable inquiry (DI Section 5.2) *Footnote 14. "5.1 Creation of Digital Image Collections. When digitizing copyrighted images, as permitted under these guidelines, an educational institution should simultaneously conduct the process of seeking permission to retain and use the images. Where the rightsholder is unknown, the institution should pursue and is encouraged to keep records of its reasonable inquiry (see Section 5.2). Rightsholders and others who are contacted are encouraged to respond promptly to inquiries.*

#### *5.2 Reasonable Inquiry.*

*A reasonable inquiry by an institution for the purpose of clearing rights to digitize and use digital images includes, but is not limited to, conducting each of the following steps: (1) checking any information within the control of the educational institution, including slide catalogs and logs, regarding the source of the image; (2) asking relevant faculty, departmental staff, and librarians, including visual resource collections administrators, for any information regarding the source of the image; (3) consulting standard reference publications and databases for information regarding the source of the image; and (4) consulting rights reproduction collectives and/or major professional associations representing image creators in the appropriate medium."*

To demonstrate in the time remaining that the proposed guidelines ask for more than can be reasonably accomplished, I wish to use the examples of the University of Oregon's SLIDES Database and our Image Reserve. Sample printouts are included in your notebooks. If you have had time to review this materials, you will note that the SLIDES Database is an example of a "Visual online catalog" described in DI Section 2.3.1. *Footnote 15. "2.3.1 Visual online catalog: An educational institution may display a visual online catalog, which includes the thumbnail images created as part of the institution's digitization process, on the institution's secure electronic network, and may provide access to such catalog by educators, scholars, and students affiliated with the educational institution."* The database contains information about more than 110,000 slides (one-third of our total holdings), added to the permanent collection since 1985. For some of the data records, a small image of the slide is included if we have already prepared a digital file for the Image Reserve. The sample you have shows the records retrieved for the artist, Johannes Vermeer, active in Holland in the 17th century. I have limited the search to only those slides that illustrate his artworks in Dresden. The data is accessible only on a local-area network, not yet on the main campus network. As such, we are in compliance with the requirement of the secure electronic network, but as the evidence shows, we cannot, and do not prevent

anyone from copying the thumbnail records on paper.

The Image Reserve project, that includes images from the online visual archive, is on the main campus network, accessible to anyone whose name and password can be verified as within the UO address domain. *Footnote 16. According to the DI guidelines, this is an example of Section 2.3.2 "Course compilations of digital images," defined above.* Therefore, the requirement that access be limited only to students enrolled in the course is not being met. We are in compliance with the requirement that the images be displayed only during the semester or term that the course is given. This being the beginning of Spring term, these pages from last term's courses are no longer available. As you can see in the handout, we are not crediting the source nor displaying the copyright notice(s) "with any copyright ownership information shown in the original source, for all images digitized including those digitized under fair use." *Footnote 17. "5.3 Attribution and Acknowledgment. Educators, scholars, and students should credit the sources and display the copyright notice(s) with any copyright ownership information shown in the original source, for all images digitized by educators, scholars, and students, including those digitized under fair use. Crediting the source means adequately identifying the source of the work, giving a full bibliographic description where available (including the creator/author, title, publisher, and place and date of publication) or citing the electronic address if the work is from a network source. Educators, scholars, and students should retain any copyright notice or other proprietary rights notice placed by the copyright owner or image archive or collection on the digital image, unless they know that the work has entered the public domain or that the copyright ownership has changed. In those cases when source credits and copyright ownership information cannot be displayed on the screen with the image for educational reasons (e.g., during examinations), this information should still be linked to the image."*

The images illustrated in the handout were scanned from slides in our permanent collection or from those provided by the instructor. Each scanned image averages 11K, thereby meeting the requirement that the digital image be a low-resolution image, "having no intrinsic commercial or reproductive value" in DI 1.4. What we have yet to do is to acquire permission to display these images on our secure network and keep them for reuse the next time they are needed, which will mean considerable work and time as outlined below.

No.	Description	Item	Rights Owner	Process
M-1	A 19 <sup>th</sup> century fashion plate, photographed by Sheldon Collins, a professional photographer, for the Costume Institute at the Metropolitan Museum of Art (MMA), New York City; included in a compilation (slide set) marketed by Sandak, an imprint of Macmillan; purchased by the University of Oregon in 1996.	19 <sup>th</sup> century print	Public domain	
		Photographic reproduction by a professional photographer	Sheldon Collins	Contact Collins (address unknown; try writing to the MMA)
		Reprint (slide) from original photograph	Metropolitan Museum of Art	Contact MMA, rights and reproductions

		Compilation, "Fashion selections from the Metropolitan Museum of Art"	Sandak	Contact Sandak, or Macmillan, legal department
M-2	Painting of Baron Schwiter, by Eugene Delacroix (1798-1863) in the collection of the National Gallery, London (inv. No. 3286). This is an original slide, purchased directly from the museum in 1966.	19 <sup>th</sup> century painting	Public domain	
		Photographic reproduction (as a slide), by staff at the National Gallery	National Gallery, London	Contact rights and reproductions department
M-3	19 <sup>th</sup> century fashion plate, illustrated in Garland, <i>History of Costume</i> , p. 181. Copy slide was made at the University of Oregon in 1992.	19 <sup>th</sup> century print	Public domain	
		Photographic reproduction by an unknown photographer	Publisher(?)	Contact publisher, editorial department
		Illustration accompanying text	Publisher	Contact publisher, legal department
		Slide made at UO from illustration on p. 181, in 1992, for display in the classroom. Slide retained (cataloged) for future educational uses.	none	
M-4	Same as No. 3, from p. 178			
M-5	Painting entitled "A group of Danish artists in Rome," dated 1837, by Constantin Hansen (1809-1880), in the collection of the Statens Museum in Copenhagen; received in 1985 as part of a subscription to the University Colour Slide Scheme, offered by the Courtauld Institute of Art, London; from a set (compilation), "Danish Painting: The Golden Age," no. 29	19 <sup>th</sup> century painting	Public domain	

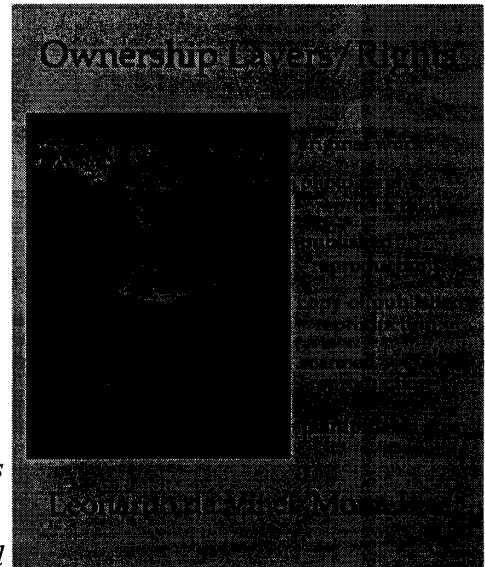
		Photographic reproduction by professional photographer employed by the Courtauld Institute	Professional photographer or Courtauld Institute	Contact the Courtauld, UCSS, director
M-6	19 <sup>th</sup> century fashion plate, originally published in <i>Fashion et theorie</i> ; subsequently illustrated in <i>History of Costume</i> , by Blanche Payne (published in 1965 by Harper & Row), as fig. 483; caption state sources as "Author's collection"	19 <sup>th</sup> century print	Public domain	
		Photographic reproduction by unknown photographer	Photographer	Contact publisher, editorial department
		Illustration accompanying text	Publisher(?)	Contact publisher, legal department
		Slide made at UO from illustration, fig. 483, in 1986, for display in the classroom. Slide retained (cataloged) for future educational uses.	None	
W-1-6	19 <sup>th</sup> century fashion plates, photographed and marketed as a slide set (compilation), <i>The History of Costume</i> (96 color slides and 4 guides), by Audio Learning, Mount Vernon, NY; purchased in 1982	19 <sup>th</sup> century prints	Public domain	
		Photographic reproductions by unknown photographer	Publisher(?)	Contact Audio Learning, editorial department
		Compilation as slide set	Publisher	Contact Audio Learning, editorial department

The task before us with these twelve slides is somewhat daunting. We will have to find addresses,



contact the rightsholder(s) to obtain permission and/or negotiate a fee if required, and keep track of these transactions for each use. Fair use will not be guaranteed, nor will it be lasting, unless we seek and received authorization for using the images. Since the Image Reserve was initiated in the Fall of 1996, we have scanned more than 600 slides. Each scanned slide needs to be analyzed as outlined above in order to be in compliance with the proposed guidelines.

In this scenario, I have not included the possibility of using the images for classroom instruction that would require higher resolution images for sharper display and reception. Nor have I discussed the requirement of limiting our selection of examples to five works by an artist as required in the MM guidelines, Section 4.2.4. *Footnote 18. "4.2.4 Illustrations and Photographs. The reproduction or incorporation of photographs and illustrations is more difficult to define with regard to fair use because fair use usually precludes the use of an entire work. Under these guidelines a photograph or illustration may be used in its entirety but no more than 5 images by an artist or photographer may be reproduced or otherwise incorporated as part of an educational multimedia project created under Section 2. When using photographs and illustrations from a published collective work, not more than 10% or 15 images, whichever is less, may be reproduced or otherwise incorporated as part of an educational multimedia project created under Section 2."* Would we have violated the "rule of five" in the proposed multimedia guidelines if it could be determined that images nos. W-1 to W-6 were all reproduced photographically by the same professional photographer, even though the use of six images is well within the 10% (or 15 images) rule for "published collective works"?



In developing guidelines for digital images and images used in multimedia projects, it might have been better had we started by clarifying some of the more fundamental questions surrounding the use of images, so in conclusion, I offer you my list, as promised earlier.

We would benefit greatly from knowing what is a copyrighted image, when do images fall into the public domain; and when is an image lawfully acquired?

We should investigate the differences between copies of text and copies of art to see if these are really the same or different. So too we should define derivative work as this applies to artwork. Would this include art reproductions as well, if the underlying object is already in the public domain?

We could begin to understand rights in images by knowing when an image is merely an idea instead of an expression that warrants protection as an original work of authorship. The process of publication is totally ambiguous with images, so we could use guidance in determining how an image achieves status as a publication so that we can begin to count the years until its protection under copyright lapses. It is possible that many of the images currently thought to be covered by copyright are not. If this could be proven or demonstrated, we could move on to other, more difficult and ultimately more useful issues to be developed into guidelines.

Among these would be how "fair use" applied to contemporary art by living or recently deceased artists when permission or authorization to use their work(s) is denied; if fair use could apply to the use of images in scholarly publications; and how much an artist can appropriate (as fair use) from the distant past or the recent past in creating new artforms. *Footnote 19. One resource, The Chicago Manual of Style, 13th edition, revised and expanded (The University of Chicago Press, 1982), offers the following counsel to authors: "Fair use is use that is fair - simply that. Uses that are tangential in purpose to the original, such as quotation for purposes of criticism will always be judged more leniently than uses that are parallel, such as relying on quotations to prove one's point rather than putting it in one's own words. Use of anything in its entirety --- poem, an essay, a chapter of a book - is hardly ever acceptable. Use of less than such a discrete entity will be judged by whether the second author appears to be taking*

*a free ride on the first author's labor. As a rule of thumb, one should never quote more than a few contiguous paragraphs or stanzas at a time, or let the quotations, even if scattered, begin to overshadow the quoter. If by these guidelines a use appears to be fair, the author should probably not ask permission for use. The right of fair use is a valuable one to scholarship, and it should not be allowed to decay through the failure of scholars to employ it boldly. Furthermore, excessive caution can be dangerous if the copyright owner proves uncooperative. Far from establishing good faith or unreasonable demands, a permission request may have just the opposite effect. The act of seeking permission establishes that the author feels permission is needed, and the tacit admission may be damaging to the author's defense. (Section. 4.47, p. 124). Similar advice for artists, scholars, students, and publishers regarding the use of images would be welcomed.*

Adopting guidelines that assume broad copyright coverage and protection for all images can be beneficial only to rightsholders. Missing is the balance that fair use should ensure for both users as well as rightsholders of copyrighted materials. So instead of buying into tasks that we cannot reasonably achieve or afford at today's nonprofit educational institutions within the proposed guidelines, it may be better to continue our struggle with the four-factor analysis of fair use and consider this our impetus to develop new guidelines that will be meaningful and useful with regard to images. At this point, only one question remains: Are we ready for this challenge?

*A version of this paper was presented on Friday, April 4, 1997, during the program, "Fair Use, Education, and Libraries: A Town Meeting to Examine the Conference on Fair Use", Indianapolis, Indiana, on the campus of Indiana University Purdue University at Indianapolis ("IUPUI") A selection of other papers by this author may be found at [Copyright & Art Images](#).*